IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8519 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL JIVABHAI NAROTTAMBHAI

Versus

DIRECTOR OF PRIMARY EDUCATION

Appearance:

1. Special Civil Application No. 8519 of 2001

MR AN PATEL for Petitioner No. 1

MS.REETA CHANDARANA, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 08/09/2004

ORAL JUDGEMENT

In the present petition, the petitioner has prayed for grant of four increments with effect from 1.6.80 with consequential pay fixation and arrears of

salary. The basis of the petitioner's claim is the two circulars of the Government, dated 15.4.89 as amended by the circular dated 11.4.90.

2. It is the case of the petitioner that he was working as Secondary School Teacher with effect from 14.6.71 and is entitled to the benefits of the said circulars and four increments pursuant thereto. It is not in dispute that the petitioner joined the secondary school as a teacher with effect from 14.6.71, but that he joined PTC college as a Assistant Teacher only with effect from 12.7.74. By circular dated 15.4.89, the Government decided to give four increments with effect from 1.6.80 to the Assistant Teachers and Laboratory Assistants working in non-Government PTC Colleges subject to the conditions mentioned therein. The said circular of 15.4.89 came to be amended by a subsequent circular dated 11.4.90 and it was provided that the benefits of circular dated 15.4.89 and four increments pursuant thereto would be available only to those Assistant Teachers and Laboratory Assistants working in Primary Teachers Training Colleges who have entered the service on 31.12.72 or prior thereto. It is further provided that the Assistant Teachers or Laboratory Assistants who were not in service on 31.12.72 or who joined thereafter will not be entitled to four increments pursuant to the said circular dated 15.4.89.

3. It is the case of the petitioner that the petitioner was actually in secondary school service on 31st December 1972 and that therefore he was entitled to the said benefits of four increments pursuant to circular dated 15.4.89 despite the cut-off date being introduced by the circular dated 11.4.90.

4. On the other hand, the case of the Government is, as can be seen from the affidavit in reply as well as from the speaking order dated 20th November 2001, that the petitioner does not fulfill the conditions laid down in the subsequent circular dated 11.4.90 since admittedly the petitioner was not working as an Assistant Teacher in primary teachers training college on 31st December 1972. In the affidavit in reply, it is specifically contended that the petitioner is not entitled to the benefits of four increments since the policy decision was taken that those Assistant Teachers serving in the PTC colleges shall be given benefits of four increments only if they are engaged prior to 31.12.72 and since the petitioner was not serving as an Assistant Teacher in PTC college till 11.7.74, he is not entitled to the benefits of the four increments under the said Government resolutions.

5. A plain reading of the circular dated 11.4.90 makes it clear that only those Assistant Teachers, Laboratory Assistants, etc. engaged in PTC colleges on or before 31.12.72 are entitled to the benefits of circular dated 15.4.89 and four increments in consequence thereof. Admittedly, the petitioner was not engaged as an Assistant Teacher in any PTC college on 31.12.72 and he was actually engaged as such only with effect from 11.7.74. The petitioner's claim to a certain pay-scale can only flow from the rules and regulations framed by the Government. There cannot be any legal authority to pay any scale different or higher from what is prescribed by the Government. If the petitioner is claiming four increments in excess of his regular scale pursuant to certain circular, the petitioner's case must fall necessarily within such a circular before he can be granted any such increments. Since the Government has clearly specified the conditions on which such increments would be made available to the Assistant Teachers and since the petitioner does not fulfill such conditions, he cannot be granted the increments as prayed for. It may be noted that the petitioner has not challenged the legality of the circular dated 11.4.90 which prescribed the condition which the petitioner does not fulfill.

6. In the result, I find that that the petitioner's claim for grant of four increments is not justified. The petition is devoid of merits and is therefore hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)
(vjn)